Christopher Khoo Ewe Cheng v Public Prosecutor

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO A-05-7 OF 1997
SHAIK DAUD, SITI NORMA YAAKOB AND AHMAD FAIRUZ JJCA
21 JULY 1998

Criminal Procedure *— Sentence — Appeal against sentence — Culpable homicide — Gruesome killing of victim of robbery which was entirely senseless and unnecessary — Whether there was any mitigating factor which entitled the court to interfere with sentence imposed by trial judge*

The appellant and three others had robbed and subsequently killed one Lau Siw Won ('the deceased'). The appellant pleaded guilty to the amended charge of culpable homicide not amounting to murder and was sentenced to 14 years' imprisonment. Learned counsel for the appellant argued that the term of imprisonment was excessive in the circumstances, since the appellant was only 24 years old at the time of the offence, a first offender and that he had pleaded guilty to the amended charge.

Held, dismissing the appeal:

An offender who pleads guilty to a charge would normally be considered for a reduction of his imprisonment sentence to about ⅓ of the sentence which the court imposes on him. The court also takes into consideration any mitigating factor put forward. The gruesome killing of the deceased in this case was entirely senseless and unnecessary. Therefore, there was no mitigating factor which entitled this court to interfere with the sentence imposed by the learned trial judge (see p 883C–F).

[Bahasa Malaysia summary

Perayu dan tiga orang lain telah merompak dan kemudiannya membunuh seorang bernama Lau Siw Won ('si mati'). Perayu mengaku salah kepada pertuduhan terpinda homisid salah tak terjumlah kepada bunuh dan dijatuhkan hukuman penjara selama 14 tahun. Peguam terpelajar perayu menghujahkan bahawa tempoh penjara adalah melampau dalam keadaan begitu, memandangkan perayu hanya berumur 24 tahun pada masa kesalahan, merupakan kesalahan buat kali pertama dan bahawa dia telah mengaku salah kepada pertuduhan terpinda.

Diputuskan, menolak rayuan:

Seorang pesalah yang mengaku salah kepada pertuduhan biasanya akan dipertimbangkan untuk pengurangan hukuman penjara setakat kira-kira ⅓ hukuman yang dikenakan oleh mahkamah ke atasnya.

Mahkamah juga mengambil kira apa-apa faktor peringanan yang dikemukakan. Pembunuhan si mati yang mengerikan dalam kes ini tidak munasabah dan keterlaluan pada keseluruhannya. Maka, tiada faktor peringanan yang memberi hak kepada mahkamah ini untuk mengganggu hukuman yang dikenakan oleh hakim perbicaraan yang arif (lihat ms 883C–F).]

Notes

For cases on appeal against sentence, see 5 *Mallal's Digest* (4th Ed,1994 Reissue) paras 2246–2265.

Legislation referred to

Penal Code (FMS Cap 45) ss 34, 302, 304

Appeal from: Criminal Trial No 55–2 of 1996 (High Court, Ipoh)

Chai Kai Woon (*Chai & Partners*) for the appellant.
Ahmad Rosli (Attorney General's Chambers) for the respondent.

Shaik Daud JCA (delivering judgment of the court): This is an appeal against the sentence of 14 years' imprisonment imposed by the High Court at Ipoh on the appellant for an offence of culpable homicide not amounting to murder.

The appellant Christopher Khoo Ewe Cheng together with three others were originally charged for an offence of murder under s 302 read with s 34 of the Penal Code (FMS Cap 45). At the outset of the trial, the prosecution tendered an amended charge of culpable homicide not amounting to murder, an offence under s 304 (first limb) read with s 34 of the Penal Code, against the appellant. He pleaded guilty to the amended charge, and understood the nature and consequences of his plea. After hearing the facts of the case, the learned judge convicted him on the amended charge and after hearing and considering submission in mitigation, sentenced him to 14 years' imprisonment with effect from the date of arrest.

The facts of the case as revealed by the prosecution appear to be rather gruesome and they are that the appellant and three others positioned themselves in the vicinity of the Hong Kong & Shanghai Bank ('HKSB') at the Old Town, Ipoh in the wee hours of the morning of 4 August 1995 around 2 to 3am. One Lau Siw Won ('the deceased') came in his Proton car and as he was about to withdraw some money from the Automated Teller Machine ('ATM'), two of the four approached him and forced him back to his car. The appellant took over the wheel. In the car, they robbed the deceased of RM1,030 cash, his ATM and credit cards and his hand phone. They then forced the deceased to give them the Personal Identification Number ('PIN') of his ATM account which he did. The appellant then went to the ATM and tried out the ATM card with the PIN number given by the deceased and having satisfied himself that the deceased actually gave the correct PIN number, he returned to the car. They then drove the deceased to an abandoned mining pool beside Sungai Kinta,

where the deceased was brought out and made to lie face down on the sand and his hands were tied behind his back with a string. They then placed a plastic bag over his head and face and choked him. This act did not, however, killed the deceased but he only fainted. On seeing that the deceased was still breathing, they untied his hands and with the same string strangled his neck tightly until he died. After that, they put him in a gunny sack and in turn put the sack in the boot of the car. They then drove to another abandoned mine near the Industrial Park Sri Pengkalan and dumped the sack containing the body of the deceased in the pool.

Learned counsel for the appellant urged upon us to reduce the term of imprisonment as he felt it was excessive in the circumstances, since the appellant was only 24 years old at the time of the offence, a first offender and that he had pleaded guilty to the amended charge. It is indeed normal in cases where an offender who pleads guilty to a charge would be considered for a reduction of his imprisonment sentence to about ⅓ of the sentence the court imposes on him. The court also takes into consideration any mitigating factor put forward. In the circumstances of this case, we could not find any mitigating factor which entitled us to interfere with the learned judge's discretion in imposing the sentence that he did. We agreed entirely with his view that the gruesome killing in this case was entirely senseless and unnecessary. The deceased had acceded to all the demands of the appellant and his gang. Having got what they wanted, they could have dumped him somewhere and taken his car away but instead they killed him, by choking and strangling him. Whatever mitigating factor was available would negate this. In the light of this, we found that we had no reason whatsoever to interfere with the sentence imposed by the learned judge. We dismissed the appeal and confirmed the sentence.

Appeal dismissed.

Reported by Loo Lai Mee